

2019 IL App (1st) 162915-U

No. 1-16-2915

Order filed April 24, 2019

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 16 MC1 203421
)	
MANUEL URRUTIA,)	Honorable
)	William B. Raines,
Defendant-Appellant.)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Affirmed. Record established that defendant knowingly and understandingly waived his right to jury trial.

¶ 2 Following a bench trial, defendant Manuel Urrutia was found guilty of battery (720 ILCS 5/12-3(a)(1) (West 2016)) and sentenced to 364 days in prison. On appeal, defendant contends that the trial court violated his constitutional rights because, when it accepted his jury waiver, it failed to ensure that he knowingly and voluntarily waived his right to a jury trial. We affirm.

¶ 3 The State charged defendant with battery in that he knowingly and intentionally caused bodily harm to Johnathan Zaia's hands, torso, and arms. At a pretrial status date on August 12, 2016, defendant and defense counsel were present in court and the trial court stated: "All right. So it's by agreement with bench. So it's by agreement to September 26th, 1:00 p.m. for bench trial."

¶ 4 On the date of trial, September 26, 2016, defense counsel informed the court in defendant's presence that he had tendered a jury waiver to the court's clerk. The following exchange occurred between the court and defendant regarding defendant's jury waiver:

"THE COURT: Mr. Urrutia, sir, I have in my hand what is called a jury waiver.

Is that your signature at the bottom?

DEFENDANT: Yes, sir.

THE COURT: Do you understand when you sign this jury waiver that you are giving up your right to a jury trial in a formal way?

DEFENDANT: Yes, sir.

THE COURT: Do you understand that I'm going to be the one that hears the evidence against you, I hear the evidence on your behalf, I decide your guilt or innocence, is that what you would like to do?

DEFENDANT: Yes, sir.

THE COURT: Jury waiver is accepted."

The record contains a preprinted form entitled "Jury Waiver," which was signed by defendant on September 26, 2016, and states: "I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing."

¶ 5 Johnathan Zaia testified that, on March 20, 2016, at 5:30 p.m., he stopped at a gas station with his brother and two friends. After Zaia parked, he saw defendant, whom he had known for about one year, walk out of the gas station's store, and he and defendant started talking about a woman whom both Zaia and defendant had previously dated. During their conversation, defendant's current girlfriend walked out of the gas station's store, after which Zaia and defendant walked towards a nearby alley to continue their conversation. When they were talking, Zaia turned to the side, and defendant punched him in the face. Zaia fell down and felt pain in his back. He assumed he had been stabbed because, as he was getting up, defendant had a knife in his hand. Zaia threw a table and stick at defendant and started chasing him down the alley with a board that had broken off the table. Zaia did not hit defendant with the objects he threw at him.

¶ 6 Zaia eventually caught up to defendant in front of defendant's house. Zaia fell down, and defendant stabbed him multiple times in the left arm. Zaia pulled the knife from defendant, causing the knife to cut his hand. Zaia fled, and soon his friend picked him up in the alley and drove him to the hospital. At the hospital, Zaia refused to answer the police officers' questions, as he was getting stitches and in pain. Zaia identified photographs of the stab wounds he sustained.

¶ 7 Karen Pliego, defendant's girlfriend, testified for defendant. On March 20, 2016, at 5:30 p.m., she was with defendant at a gas station and, when she left the gas station's store, Zaia and defendant were talking next to her car. Zaia and defendant walked to the mouth of a nearby alley and continued talking. Zaia "had a tone" with defendant and said he was a "Latin King." After she finished putting gas in her car, she turned around and saw Zaia pick up a table and try to throw it at defendant. Defendant ran down the alley and Zaia threw a board at defendant, hitting

him in the head. Pliego went to look for defendant and eventually saw Zaia chasing defendant with a knife. Defendant would not get in her car and ran towards his house. Defendant and Zaia fought in front of defendant's house and, after the fight ended, defendant ran and Zaia had a knife in his hand. When she saw defendant the next day, he had a cut on his head but no bruises, scratches, or stab wounds.

¶ 8 Defendant testified that, when he was at the gas station on March 20, 2016, Zaia approached him at his car while his girlfriend, Pliego, was inside the store. Defendant thought Zaia wanted to talk to him about a girl. Defendant and Zaia started talking, and Zaia told him he was going to "beat [defendant] down." Defendant told Zaia that he did not want any problems. Zaia responded that he "could blow you down right now" and told him he had a gun in his car. Defendant and Zaia walked towards an alley and Zaia told him in an "aggressive tone" he was a "Latin King." Defendant punched Zaia in the face. Zaia picked up a table and chased him through the alley. Zaia threw the table and a glass bottle at him, but the items missed him. Zaia picked up a wooden board and chased him down the alley with it, hitting him two or three times.

¶ 9 When defendant reached the front of his house, Zaia swung the board at defendant and told defendant to fight him. Pliego drove up and told defendant to get into her car. Zaia threatened them, saying, "I will break your windows out if he goes in your car, ***." Defendant pulled out a knife and said, "my life is in danger." Zaia hit defendant with the board and defendant stabbed Zaia. Zaia kept swinging the board at him and defendant kept stabbing Zaia until Zaia pulled the knife from defendant's hands, at which point defendant fled.

¶ 10 The parties stipulated that Zaia's blood test, taken from the hospital after the incident, showed he was positive for benzodiazepines, "cannaboids [*sic*]," cocaine, and opiates.

¶ 11 In closing argument, defense counsel argued that defendant acted in self-defense. The court found defendant guilty of battery. In doing so, it found Zaia credible, Pliego “less credible,” and defendant’s testimony “pretty incredible.” The court sentenced defendant to 364 days in prison and subsequently denied his motion for new trial and motion to reconsider sentence.

¶ 12 Defendant now claims that the trial court violated his constitutional rights because, when it accepted his jury waiver, it failed to ensure that he voluntarily, knowingly, and intelligently waived his right to a jury trial. Defendant says the trial court failed to provide adequate admonitions about the nature of the right he was waiving.

¶ 13 As an initial matter, defendant acknowledges he did not preserve his claim, as he did not raise the issue in the trial court. See *People v. Thompson*, 238 Ill. 2d 598, 611 (2010) (to preserve claim for review, defendant must object at trial and include issue in posttrial motion). Defendant correctly notes that we may review his jury waiver challenge under the plain-error doctrine. See *People v. Gatlin*, 2017 IL App (1st) 143644, ¶ 32 (“when a defendant’s right to a jury trial has been violated, such an error may be deemed a plain error under the second prong of the plain-error doctrine”). But before we apply the plain-error doctrine, we must first determine whether any error occurred at all. See *People v. West*, 2017 IL App (1st) 143632, ¶ 11.

¶ 14 The right to a jury trial is a fundamental constitutional right. *People v. Bracey*, 213 Ill. 2d 265, 269 (2004). Although a defendant may waive this right, the waiver must be made knowingly and understandingly in open court. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7; see 725 ILCS 5/103-6 (West 2012).

¶ 15 The trial court need not give any specific admonishment or advice before accepting a jury waiver. *Id.* Rather, the determination of whether a jury waiver is valid depends on the facts and circumstances of each case and there is no precise formula to apply. *West*, 2017 IL App (1st) 143632, ¶ 10. It is the defendant's burden to establish that his jury waiver was invalid. *Reed*, 2016 IL App (1st) 140498, ¶ 7. When the facts are not in dispute, as here, we review *de novo* the issue of whether defendant knowingly and understandingly waived his right to a jury trial. See *Bracey*, 213 Ill. 2d at 270.

¶ 16 Here, we conclude that defendant knowingly and understandingly waived his right to a jury trial. For one, defendant signed the written jury waiver on the day of trial and tendered it to the court that same day. His signature on that form, itself, is some evidence of a knowing and understanding waiver. See *Reed*, 2016 IL App (1st) 140498, ¶ 7. And on the date of trial, defense counsel, in defendant's presence, informed the court on the record that counsel had tendered a jury waiver to the court's clerk. Defendant did not object or ask questions, providing further evidence that his jury waiver was valid. See *id.* ¶ 8; *Bracey*, 213 Ill. 2d at 270 ("Generally, a jury waiver is valid if it is made by defense counsel in defendant's presence in open court, without objection by defendant.").

¶ 17 What's more, on the date of trial, the court engaged in a colloquy with defendant about his jury waiver, in which the court asked defendant if it was his signature at the bottom of the jury waiver form and whether he understood that, when he signed the jury waiver, he was giving up his right to a jury trial. Defendant responded "Yes, sir" to each question. The court asked defendant if he understood that the court would hear the evidence and decide his guilt or innocence, and if that was what he wanted to do. Defendant responded, "Yes, sir." See *West*,

2017 IL App (1st) 143632, ¶ 12 (finding valid jury waiver when court admonished defendant that, by signing and tendering waiver form, he was waiving jury trial and court, not jury, would hear evidence, and when defendant never objected to bench trial and “affirmatively indicated” he understood he was waiving his right for jury to hear case).

¶ 18 And at a pretrial status date on August 12, 2016, when defendant and defense counsel were present, the trial court stated that the case was set “by agreement with bench” and “by agreement to September 26th, 1:00 p.m. for bench trial.” Defendant did not object to the case being set for a bench trial, providing additional support that his jury waiver was valid. See *Reed*, 2016 IL App (1st) 140498, ¶¶ 7-8 (“a present defendant’s silence while his or her attorney requests a bench trial provides evidence that the waiver is valid”).

¶ 19 For all of these reasons, the record demonstrates that defendant’s waiver of a jury trial was made knowingly and understandingly.

¶ 20 Defendant says the admonishments were deficient, that the court did not address whether he understood he had a constitutional right to a jury trial, explain the nature of a jury trial, or ask him if his jury waiver was the result of any threats or promises. We have already explained, however, that the trial court was not required to give any specific admonishment or advice to validate the jury waiver. Perhaps it would have been preferable for the court to mention the constitutional nature of defendant’s right to a trial by jury and to inquire whether his waiver was the product of threats or promises, but the absence of these specific admonishments, under the circumstances present here, was not fatal. See *West*, 2017 IL App (1st) 143632, ¶¶ 12, 14 (finding jury waiver valid, despite fact that court did not ask defendant whether his waiver was result of promises or threats).

¶ 21 Nor are we persuaded by defendant's citations to cases where the defendant was undergoing treatment for schizophrenia and never affirmatively stated in open court that he was waiving his right to a jury trial; where the defendant proceeded *pro se* and was simply asked whether he wanted a jury or bench trial, without any further admonishment at any time; or where neither the defendant nor his counsel were ever asked in open court, nor did they affirmatively state in open court, whether they were waiving that right. See, respectively, *People v. Murff*, 69 Ill. App. 3d 560, 561-62, 564 (1979); *People v. Sebag*, 110 Ill. App. 3d 821, 829 (1982); *People v. Rambo*, 123 Ill. App. 2d 299, 302-305 (1970). Defendant here was represented by counsel, engaged in a far more specific colloquy with the trial court about his waiver, and was present at other times in open court, with counsel, when discussion of the waiver occurred without objection.

¶ 22 Because we find that defendant knowingly and understandingly waived his right to a jury trial, defendant cannot demonstrate any error at all, much less plain error. We affirm his conviction.

¶ 23 Affirmed.